



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TRG
Docket No: 670-99
2 October 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by Headquarters Marine Corps dated 24 August 1999 and 22 February 2000, copies of which are enclosed. The Board also considered your rebuttal to the advisory opinions dated 12 May 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Marine Corps on 4 November 1995 for three years. In 1997, your commanding officer became aware of several alcohol related incidents, several traffic violations and multiple incidents of domestic violence.

On 23 January 1998 you were notified of separation processing due to a pattern of misconduct. On 12 February 1998 you waived your right to have your case heard by an administrative discharge board (ADB) in exchange for a suspended discharge under other than honorable conditions, or an unsuspended general discharge.

The commanding officer recommended an unsuspended general discharge stating, in part, as follows:

... There is no clear reason that he has been allowed to continue to serve the Marine Corps without punishment nor official counseling, and with undeserved proficiency and conduct marks. His conduct came to my

attention in October 1997 after a 6th incident of domestic violence. It has taken since October to prepare this administrative separation package due to delays caused by (his) legal counsel, difficulty in obtaining information from Family Counseling Center (FCC), and administrative difficulty at this headquarters.

... Since October (he) has been an obstructionist to his rehabilitation. He has been verbally abusive to counselors and staff personnel at the FCC and has been formally dropped from any treatment opportunities at my direction and with the concurrence of the Director, FCC. His actions are not in keeping with the standards of a Marine NCO.

... He has failed to complete nearly all rehabilitation offered him. While (his) conduct clearly supports a discharge under other than honorable conditions, I strongly recommend he be immediately discharged with a general under honorable conditions discharge due principally to the absence of evidence that shows this command's attempt to hold him accountable for his actions. ...

With his recommendation, the commanding officer included a chronology of all of your alcohol and traffic offenses and listed all of the documented incidents of domestic violence. You submitted a rebuttal to each item listed in the chronology. Concerning the domestic violence charges you have submitted evidence that at least some of these incidents resulted from your wife assaulting you. You also contend that you were unaware that your license was revoked in 1993 and, therefore, the charge of driving on a suspended license was unjust. It appears that the license would have been reinstated on payment of a fee but you were unaware of this requirement.

The discharge package was reviewed by the Staff Judge Advocate on 8 April 1998 and was found to be sufficient in law and fact. The SJA recommended a suspended general discharge. Subsequently, the discharge authority directed a general discharge and you were so discharged on 17 April 1998. At that time you were not recommended for reenlistment and were assigned an RE-4 reenlistment code.

In your application you are requesting recharacterization of your discharge, a correction of your record to show service until the expiration of your enlistment, and a change in the reenlistment code. You contend that your discharge due to a pattern of misconduct was improper because regulations require that prior to

such action, the individual be counseled and given an opportunity to overcome his deficiencies. You point out that there is no official counseling related to domestic violence or driving on base restriction. You further contend that there must be some evidence that you did not overcome the noted deficiencies.

As indicated, the advisory opinions essentially conclude that the discharge was proper and the reenlistment code was correctly assigned. You point out, in your rebuttal to the advisory opinions, that the commanding officer admitted that you had been allowed to continue to serve "without punishment nor official counseling." You contend, in effect, that this error was so significant that the discharge processing must be set aside. You have submitted a character reference from a gunnery sergeant in which he attests to your excellent performance of duty and opines that your wife was the aggressor in the domestic violence incidents.

The Board noted that you attended an inpatient alcohol rehabilitation program and FCC classes. The Board believed that these classes certainly resulted in your counseling and awareness that further related offenses could result in your discharge. The Board noted that you worked at the Office of the Staff Judge Advocate and were represented by counsel during the discharge processing. The Board also noted that you waived an ADB, apparently after consulting with counsel, in exchange for either a suspended discharge under other than honorable conditions or an unsuspended general discharge. Since you received a considerable benefit when your conditional waiver of the ADB was accepted, the Board believed that you should not be able to raise these issues now. The Board concluded that the general discharge was proper as issued and no change is warranted. Given its conclusion that the discharge was proper as issued, the Board further concluded that there was no basis to reinstate you to active duty to complete your enlistment.

Concerning the reenlistment code, the Board concluded that the commanding officer did not abuse his discretion when he determined that a reenlistment recommendation was not warranted in your case. Further, an individual discharged by reason of misconduct must receive an RE-4 reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1040
MMER/RE

22 FEB 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER [REDACTED]
[REDACTED]

1. [REDACTED] service record has been reviewed and it has been determined that his reenlistment code of RE-4 was correctly assigned. The reenlistment code was assigned based on his overall record and means that he was not recommended for reenlistment at the time of separation.
2. [REDACTED] was discharged Under Honorable Conditions (General) on April 17, 1998 by reason of Pattern of Misconduct. A review of the administrative portion of his service record indicates that he was counseled concerning an alcohol related incident, and not being recommended for promotion. It is also noted that on January 23, 1998, the Commanding Officer, Headquarters and Support Battalion, Marine Corps Base, Camp Lejeune, issued a Notification of Separation Proceedings notifying then Corporal Hope of his intention to recommend to the Commanding General that he be discharged from the Marine Corps by reason of pattern of misconduct. The basis for this recommendation was five cases of domestic violence, two DWIs, driving on base restriction, and the page 11 counseling entry for an alcohol related incident.
3. After a review of all relevant information, this Headquarters concurs in the professional evaluation of [REDACTED] qualifications for reenlistment at the time of separation. Once a code is correctly assigned it is not routinely changed or upgraded as a result of events that occur after separation or based merely on the passage of time.

[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1760
MMSR-6J
24 Aug 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER [REDACTED]

Ref: (a) MMR Route Sheet of 18Aug99, Docket No. 0670-99
(b) MCO P1900.16E (MARCORSEPMAN)

1. Reference (a) requests an advisory opinion on former [REDACTED] request to have his records corrected with regard to his character of service, reason for separation and his reenlistment code.
2. Former [REDACTED] was involuntarily separated from the Marine Corps on 17 April 1998 under paragraph 6210.3 of reference (b). He was given a general discharge under honorable conditions by reason of a pattern of misconduct.
3. Questions involving the assignment of reenlistment codes are under the cognizance of the Performance Evaluation Branch (MMR).
4. Former [REDACTED] was discharged under proper authority. We therefore must regretfully recommend that his petition not be granted favorable consideration.

[REDACTED]
Head, Separation and
Retirement Branch
By direction of the Commandant
of the Marine Corps